

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM COVELL, JR.,

Plaintiff,

v.

DECISION AND ORDER
12-CV-660

CHIARI & ILECKI, LLP,
DOES 1-10, Inclusive

Defendants.

This case, wherein plaintiff seeks to recover for defendants' alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692 *et. seq.*, was referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. §636(b)(1). Defendant Chiari & Ilecki, LLP ("Chiari & Ilecki") has moved to dismiss the amended complaint for failure to state a claim pursuant to Federal Rules of Civil Procedure 8 and 12(b)(6). On October 16, 2012 Magistrate Judge Scott issued a Report and Recommendation recommending that the motion to dismiss be granted in part and denied in part (Dkt. No. 14).

The Magistrate Judge specifically found that because plaintiff was aware that it was his son who owed the purported debt, and because the least sophisticated consumer would have known that the letter was not intended for plaintiff and not a false representation of a debt owed, the majority of Plaintiff's claims under Section 1692 of the FDCPA should be dismissed. However, the

Magistrate Judge also found that because Section 1692e(10), unlike other provisions of the FDCPA involving false representation, allows claims for “the mere dunning of the wrong party”, plaintiff met the plausibility threshold for a claim under Section 1692(e)(10). Thus, the Magistrate Judge recommended that the defendant’s motion to dismiss as to this claim be denied.

On October 30, 2012 defendant filed objections to the Magistrate Judge’s Report and Recommendation (Dkt. No. 15). Plaintiff filed a response on November 16, 2012 (Dkt. No. 17). Defendant replied to plaintiff’s response on November 27, 2012, (Dkt. No. 18), and the Court deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review, and after reviewing the submissions from the parties, the Court hereby adopts Magistrate Judge Scott’s recommendation to dismiss the majority of the amended complaint alleging violations of Section 1692 of the FDCPA, but to allow plaintiff to proceed with respect to his claim pursuant to Section 1692e(10) only.

Accordingly, for the reasons set forth in Magistrate Judge Scott’s Report and Recommendation, defendant Chiari & Ilecki’s motion to dismiss is granted in part and denied in part. The case is referred to the Magistrate Judge for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: February 21, 2013